



Owner-Operator Independent Drivers Association

National Headquarters: 1 NW OOIDA Drive, Grain Valley, MO 64029

Tel: (816) 229-5791 Fax: (816) 427-4468

Washington Office: 1100 New Jersey Ave. SE, Washington, DC 20003

Tel: (202) 347-2007 Fax: (202) 347-2008

August 3, 2020

The Honorable Jim Mullen
Deputy Administrator
Federal Motor Carrier Safety Administration
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Re: Docket # FMCSA-2018-0248, “Hours of Service of Drivers” – Petitions for Reconsideration

Dear Deputy Administrator Mullen:

The Owner-Operator Independent Drivers Association (OOIDA) is the largest trade association representing the views of small-business truckers and professional truck drivers. OOIDA has more than 160,000 members located in all fifty states that collectively own and operate more than 240,000 individual heavy-duty trucks. OOIDA’s mission is to promote and protect the interests of its members on any issues that might impact their economic well-being, working conditions, and the safe operation of commercial motor vehicles (CMVs) on our nation’s highways.

For many years, our members have repeatedly told lawmakers and the Federal Motor Carrier Safety Administration (FMCSA) that the existing Hours of Service (HOS) rules are not sensible for today’s trucking industry. They are overly complex and provide virtually no flexibility for drivers. They effectively force drivers to be on the road when they are tired, during busy travel times and hazardous weather and road conditions, or when they simply are not feeling well. The unyielding 14-hour clock also pressures truckers to drive faster when they’re running short on available time. Additionally, drivers are routinely at the mercy of shippers and receivers in regard to loading and unloading their truck, which consumes between 11 and 20 hours in an average week. Consequently, today’s HOS requirements have not resulted in statistical improvements to highway safety – in fact, we would argue they jeopardize highway safety.

Since the HOS rulemaking process began in 2018, we applauded the Agency’s approach which solicited input from the actual men and women who have to work and live by the regulations. This outreach, through public comment, listening sessions, and direct stakeholder engagement, resulted in a final HOS rule that represents a welcomed shift toward developing regulations that better reflect the realities of trucking and improve safety for all highway users. The data and

feedback from real truckers combined with the roughly 200 studies submitted to the docket provided ample justification for the Agency's final rule.

We support the final rule which will improve efficiency without compromising safety by providing flexibility for drivers in four areas without changing the maximum allowable driving time. These reforms will provide drivers more opportunities to rest when they are tired, to stay off the road during adverse driving conditions, and to maintain greater control over their own schedules. These changes will help reverse the rising crash rates highway users have experienced since the inception of existing HOS standards. Because the final HOS rule will improve highway safety, OOIDA encourages FMCSA to implement the improvements on September 29th, 2020, as proposed.

As the rulemaking repeatedly explains, the HOS rule does not increase available driving time. None of the revisions will give drivers more driving time beyond the 11-hours allowed in the current HOS regulations or the 13-hour limit provided under the current adverse driving conditions exceptions. Other than the adverse driving conditions provision, none of the changes permit drivers to operate a CMV after accumulating 14 hours of on-duty time during a work shift. None of the revisions allow the use of multiple or intermittent off-duty breaks to extend the work day. Also, the weekly 60/70-hour limits concerning the maximum number of on-duty hours that may be accumulated before driving is prohibited are unchanged.

1. Split Sleeper-Berth

OOIDA supports the Agency's modification of the split sleeper-berth provision. This additional flexibility will improve drivers' rest and alertness. It makes far more sense to allow alert drivers to leave the sleeper-berth and begin to drive with the option to obtain additional rest later in the day, rather than forcing drivers to idly wait for their driving clock to begin again, which can essentially cause a trucker to drive when tired and rest when alert.

There have been various studies concluding that truck drivers should be permitted to split their off-duty time in order to "sleep when sleepy and drive when alert." Included within the findings of FMCSA's 2012 study entitled *Investigation of the Effects of Split Sleep Schedules on Commercial Vehicle Driver Safety and Health*¹ were:

- The research states "if consolidated nighttime sleep is not possible, a split sleep opportunity appears to be a better choice with respect to effects on sleep than a consolidated daytime sleep opportunity. While any single study is not definitive, the present study is congruent with the literature on shift work and provides support for allowing greater flexibility in the sleeper-berth rule for CMV drivers, including permitting CMV drivers to split their sleep more evenly than the currently permitted 8/2 split of off-duty time."
- "Results of the present study suggest that when consolidated night sleep is not possible, split sleep is preferable to consolidated daytime sleep in that split sleep yields more total sleep time and less subjective sleepiness. The study looked for but did not find strong support for

¹ Federal Motor Carrier Safety Administration (FMCSA), *Investigation of the Effects of Split Sleep Schedules on Commercial Vehicle Driver Safety and Health*. Report Number FMCSA-RRR-12-003. December 2012.

differential effects of nighttime versus split versus daytime sleep on performance, mood, and blood pressure.”

- “With respect to the FMCSA regulations pertaining to CMV driver use of sleeper-berths, the study findings suggest possible benefits—in the form of increased total sleep time and decreased sleepiness—of a more flexible sleeper-berth rule, allowing for a greater splitting of sleep opportunity than is currently permitted.”

Other studies have confirmed that there is no one-size-fits-all prescription for restorative sleep. Sleep requirements are highly individualized and depend on age, weight, physiology, genetic makeup, driver health, eating habits, activity levels during waking hours, and quality of the sleep.²

The split sleeper-berth reforms will be a major benefit to OOIDA members, as it will permit them to rest when needed without being penalized by the HOS regulations. The additional split sleeper option will allow drivers to operate more safely and efficiently. Drivers will also feel less pressured to operate while tired under the change, and will have less stress because they will have the option to rest in the sleeper and would still have available hours left to drive and work. Thus, changing the split sleeper rule would give them more power to choose how they would complete their driving time and still make their appointments.

2. 30-minute Break Requirement

The current rule, which requires a driver to take a 30 minute off-duty break if more than 8 consecutive hours had passed since the last off-duty or sleeper-berth period of at least half an hour, was implemented without any evidence that the break would reduce crashes and we have not seen any statistics since then proving a reduction in crashes. Furthermore, there are many operational situations where the 30-minute rest break requires drivers to stop when they simply do not need to, making the mandate either impractical or unsafe. Too often, drivers are unable to find a safe and legal parking space, which forces them to park on road shoulders or other unsafe locations, simply to satisfy the rule. In other words, the current HOS rules are forcing drivers to comply with a regulation that we know is unsafe.

The Agency’s proposal to make the 30-minute break requirement applicable only in situations where a driver has driven for a period of 8 hours without at least a 30-minute non-driving interruption improves upon the current requirement. During the course of their daily schedules, drivers already have opportunities to take breaks at their own discretion or when routine maintenance requires them to do so. These stops include purchasing food and fuel, using the restroom, and/or performing necessary inspections such as checking load securement and vehicle equipment.

The majority of our members expect to use the additional flexibility provided by the rule to more efficiently utilize their on-duty time. While their total miles might increase on a given day, the final rule does not increase their daily driving time as they are still restricted to the 11-hour rule.

² Aeschbach, D., et al., A Longer Biological Night in Long Sleepers Than in Short Sleepers, *Journal of Clinical Endocrinology & Metabolism* 88, pp. 26-30 (2003); www.sleepfoundation.org/article/how-sleep-works/how-much-sleep-do-we-really-need.

Many drivers have also expressed that more flexibility would allow them to complete their day more quickly and get home sooner.

The modification of the 30-minute break requirement will also help drivers stay on schedule and help them better plan their routes and trips. Giving drivers the choice to take the break in the sleeper-berth or on-duty not-driving will allow them to fulfill the break during the normal course of their day when they are inspecting their cargo, fueling the truck, or stopping to eat. Again, the provision will also help eliminate instances where drivers are compelled to make unnecessary stops or forced to pull over in unsafe locations.

3. Adverse Driving Conditions

OOIDA supports the proposal that would allow a driver up to a 16-hour driving window and applying the exception to the 14-hour duty period will achieve the most practical benefits. This change would permit truckers to drive safer, not further, in adverse conditions. Drivers can choose to stop and avoid continuing through adverse or unforeseen circumstances altogether. Under the proposal, drivers would feel less pressure to continue operating in unsafe road conditions or to drive faster than is prudent for those conditions.

Extending the driving window will provide more flexibility for drivers to stop when it doesn't make sense or is less safe to drive. Truckers do not necessarily want to drive more hours; rather, drivers and owner-operators prefer more flexibility to *wait out* adverse driving conditions rather than *drive out* of them. We believe this change will also help drivers who were previously hesitant to use the exception because law enforcement personnel often use their own subjective evaluation to determine whether the exception is appropriate.

4. Short-haul Operations

Extending the short-haul exception will provide short-haul drivers additional flexibility to complete their trips and return home if they encounter unforeseen delays during their work schedules. As long as short-haul drivers do not exceed 11 hours of on-duty driving time, then they should have an equal number of working hours in their daily schedules. Additionally, exempting these operations from the electronic logging device (ELD) mandate would create cost savings for more carriers and drivers. FMCSA estimated, "the typical carrier will likely be required to spend about \$584 per CMV to purchase and install ELDs. In addition to purchase costs, carriers will also likely spend about \$20 per month per CMV for monthly service fees." These cost savings would be significant without compromising safety since merely installing ELDs does not achieve any safety benefits.

As the final HOS rule is implemented, OOIDA reminds the Agency that drivers must have sole discretion about how and when to use these provisions. Drivers have the best understanding of when they should take a break, when road conditions are too dangerous, and when they should rest. We also recommend that FMCSA ensure that these HOS improvements are not used to exacerbate detention times currently experienced by drivers. Detention time is both a safety and financial concern for small-business truckers and professional drivers. In addition to the lost hours and wages, there are other hidden costs throughout the supply chain that are detrimental to

highway safety and the economics of the profession. Logistical uncertainties from detention time prevent drivers from accurately planning trips, finding safe places to park, and making it in time to pick-up their next load. This contributes to increased driver dissatisfaction and turnover which undermines the overall safety and efficiency of the industry.

Moving forward, we hope FMCSA will continue exploring other ways of amending HOS regulations to further improve highway safety. OOIDA believes additional study is warranted regarding 6/4 and 5/5 split sleeper options. We would support a federal pilot program examining the feasibility of these alternatives.

The final HOS rule will provide drivers more opportunities to rest when they are tired, to stay off the road during adverse driving conditions, and to maintain greater control over their own schedules. As the rulemaking repeatedly makes clear, these HOS reforms will not increase available driving time. The changes will help reverse the rising crash rates highway users have experienced since the inception of existing HOS standards. Because the final rule will improve highway safety, OOIDA encourages FMCSA to implement the improvements on September 29th, 2020.

Thank you,

A handwritten signature in black ink that reads "Todd Spencer". The signature is written in a cursive, flowing style.

Todd Spencer
President & CEO
Owner-Operator Independent Drivers Association, Inc.